

Application No. 09/701,195
Docket No. 1005-AGGUS3

Examiner ROY M. PUNNOOSE
Art Unit 2877

REMARKS

Restriction Requirement

In the Official Action the Examiner indicated that Claims 54-80 are directed to an invention that is independent or distinct from the invention set forth in Claims 42-53. The Examiner further indicated that the invention of Claims 42-53 was deemed to be constructively elected because the Applicant had already received a previous action on Claims 42-53. Accordingly, Applicant is cancelling Claims 54-80.

Allowable Subject Matter

In the Official Action, the Examiner indicated that Claims 42-53 are allowable.

Information Disclosure Statement

The Examiner indicated that the foreign patent document and the non-patent documents identified in the Information Disclosure Statement filed March 2, 2001 were not considered because those documents were missing from the file. Applicant is submitting a supplemental information disclosure statement with this response. The supplemental information disclosure statement includes copies of the foreign patent document and the non-patent documents identified in the Information Disclosure Statement filed March 2, 2001 so that they can be considered by the Examiner.

Applicant believes that the documents provided with the supplemental information disclosure statement submitted herewith should be considered notwithstanding the provisions of 37 CFR 1.97. The Applicant fully complied with the requirements of 37 CFR 1.97(b) by timely filing the information disclosure statement within the time periods set in that rule. This application properly claims the benefit of the filing date of the earlier filed patent application identified in the previously submitted Information Disclosure Statement and an information disclosure statement

complying with 37 CFR 1.98(a)-(c) was submitted in the earlier filed application. Therefore, the Applicant was not required to submit copies of the documents listed on the PTO-1449 pursuant to 37 CFR 1.98(d). The Examiner failed to indicate in the first Office Action whether the prior art in the related earlier application was reviewed, even though he is required to do so in section 2001.06(b) of the M.P.E.P. Consequently, the Applicant was not aware that the foreign patent document and the non-patent documents were not in the parent application file until the issuance of the Office Action mailed on July 28, 2004, more than three (3) years after the Information Disclosure Statement was submitted. It would be manifestly unfair to require the Applicant to pay the fee required by 37 CFR 1.97(c) in order to have the documents considered now, when the problem could have been resolved earlier if the Examiner had complied with the mandate of M.P.E.P. 2001.06(b). In this regard, it is noted that 37 CFR 1.97(f) provides that if a *bona fide* attempt is made to comply with 37 CFR 1.98, but part of the required content is inadvertently omitted, then additional time may be given to enable full compliance. In view of all the circumstances of the present case, it is believed that the additional documents submitted herewith should be considered by the Examiner without further expense by the Applicant.

The Drawings

The Examiner objected to the drawings because they include a reference numeral that is not mentioned in the written description. More specifically, the Examiner indicated that the reference numeral "67" is not included in the specification. The Examiner required correction of the drawings.

Instead of amending the drawings, the Applicant is amending the specification to insert the reference numeral in the descriptive text. As set forth above in the amendment of the text at page 19, lines 11-22, and as shown in the drawings, the

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reference numeral "67" identifies the canopy over the light 71 in the imaging apparatus 5. The canopy is clearly shown in Figures 3, 7, 8, and 9. The description at page 19, lines 20-22, precisely describes the component identified with reference numeral "67".

It is believed that the amendment of the specification obviates the need to amend the drawings.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant believes that this application is in condition for allowance. Accordingly, it is respectfully requested that the Examiner reconsider the application and the Official Action in the light of the amendments and remarks presented herein.

Respectfully submitted,
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